

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

<b>BEACON SALES ACQUISITION, INC. d/b/a QUALITY ROOFING SUPPLY COMPANY</b>	Cases 4-CA-36952
	4-CA-37107
	4-CA-37120
	4-CA-37209
and	4-CA-37304
	4-CA-37306
<b>INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 542</b>	4-CA-37377
	4-CA-37378
	4-CA-37433
	4-CA-37438
	4-CA-37456
	4-CA-37548
	4-CA-37577
	4-CA-37884
	4-CA-37885

**CHARGING PARTY INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 542 AMENDED SPECIAL  
APPEAL**

Charging Party, International Union of Operating Engineers, Local 542, files this amendment to its special interlocutory appeal of the Administrative Law Judge's decision that the Charging Party failed to effectuate good service on Robert Buck, the Respondent's former Chief Executive Officer. Charging Party adds following paragraphs eleven and twelve. Charging Party relies on its earlier appeal and exhibits thereto:

1. On April 29, 2011, the charging party mailed to Robert Buck, the former CEO and Chairman of the Board of Directors for the Respondent, at his home, a subpoena via regular mail and certified mail, return receipt requested. The certified letter contained the original subpoena as well as a witness fee to compel Mr. Buck's attendance at the trial which began on May 13, 2011. The regular mail had a photocopy of the subpoena and no witness fee. On May 9, 2011. The Certified letter was opened, returned refused, to the Union office. (A true and correct copy of the Certified letter is attached hereto as Exhibit "A")
2. The Respondent stated that the Certified letter was in fact received by Mr. Buck's wife and refused by her.
3. On May 16, 2011, a signed certified receipt was returned to the Union office. (A true and correct copy of the Certified letter is attached hereto as Exhibit "B")
4. The Respondent stated that the signature is not that of either Mr. or Mrs. Buck.
5. On June 7, 2011, Administrative Law Judge Michael Rosas ruled that this was not good service and granted Respondent's Motion to Revoke

- the Subpoena. The trial in this matter is going on currently and is scheduled to continue until June 14 and perhaps longer.
6. Service of subpoenas may be made by personal service, by registered or certified mail, by telegraph, or by leaving a copy at the principal office or place of business of the person required to be served. Board's Rules, Section 102.113(c).
  7. The Subpoena was served by certified mail.
  8. Any sufficient proof may be relied upon to establish that service was made. Section .102.113(e). *Best Western City View Motor Inn*, 327 NLRB 468, 468–469 (1999) (the attorney's affirmation of service is sufficient). Even though it is not essential to provide a postal return receipt card signed by the person subpoenaed to effectuate service. *Id.* at 469, the Charging Party produced the certified mail receipt.
  9. Further any attempts to frustrate service by refusing or failing to claim certified mail does not. "[T]he Board has long held that a respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service will not be permitted to defeat the purposes of the Act" (citations omitted). *SMC Engineering & Contracting*, 324 NLRB 341, 341 (1997). Accord: *Michigan Expediting Service*, 282

NLRB 210, 210 fn. 6 (1986), enfd. mem. 869 F.2d1492 (6th Cir. 1989); and *Da Vinci Fashions*, 286 NLRB 809, 814–816 (1987).

10.To allow the Judge’s ruling regarding certified mail service would in effect eviscerate the ability to serve a subpoena by certified mail as outlined in the Board’s Rules and Regulations.

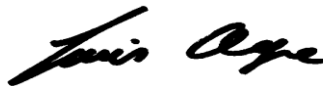
11.The Charging Party would be prejudiced in waiting until a decision is issued by the Administrative Law Judge in the fact that it would be forever precluded from introducing this testimonial evidence.

12.The ruling by the Administrative Law Judge was oral and the transcript, by information and belief, is not available yet,

13.Attached are the Motions and Responses thereto that were filed in this matter.

14.For the above cited facts and precedent, the Charging Party respectfully submits that the Administrative Law Judge’s ruling

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis Agre", written in a cursive style.

Louis Agre

## **CERTIFICATE OF SERVICE**

I, Louis Agre, Esquire, hereby certify that I served a true and correct copy of Charging Party International Union Of Operating Engineers, Local 542 Special Appeal, via electronic mail, on the date indicated below upon:

Administrative Law Judge Michael Rosas  
Michael.Rosas@nlrb.gov

and

Peter Chatolowicz, Esquire  
[PChatilovicz@seyfarth.com](mailto:PChatilovicz@seyfarth.com)

And

Jennifer Spector, Esquire  
Jennifer.Spector@nlrb.gov



---

Louis Agre  
International Union of Operating  
Engineers, Local 542  
1375 Virginia Drive, Suite 100  
Ft. Washington, PA 19034  
(215) 542 7500

DATED: June 10, 2011

